STATE OF MICHIGAN

COURT OF APPEALS

CATHERINE NICOLE DONKERS and BRAD LEE BARNHILL, Plaintiffs-Appellants,	FOR PUBLICATION December 18, 2007 9:00 a.m.
v	No. 270311 Washtenaw Circuit Court
TIMOTHY KOVACH, Defendant-Appellee.	LC No. 05-000994-NM Advance Sheets Version

Before: Jansen, P.J., and Fitzgerald and Markey, JJ.

MARKEY, J. (*dissenting*)

I respectfully dissent because the plain text of MCL 600.1432 and MCL 600.1434, read in harmony, requires a witness to raise his or her right hand to swear or affirm to tell the truth before testifying. I also find no constitutional impediment to applying the plain statutory language as written. Thus, the trial court did not commit a legal error in requiring plaintiff Donkers to raise her right hand to affirm to tell the truth on deposition. Finally, considering all the circumstances of this case, I conclude that the trial court did not abuse its discretion or commit plain error warranting reversal by dismissing this case on Donkers' refusal to do so. Consequently, I would affirm.

The pertinent statutes provide:

> The usual mode of administering oaths now practiced in this state, by the person who swears holding up the right hand, shall be observed in all cases in which an oath may be administered by law except as otherwise provided by law. The oath shall commence, "You do solemnly swear or affirm". [MCL 600.1432(1).]
>
> Every person conscientiously opposed to taking an oath may, instead of swearing, solemnly and sincerely affirm, under the pains and penalties of perjury. [MCL 600.1434.]
>
> The word "oath" shall be construed to include the word "affirmation" in all cases where by law an affirmation may be substituted for an oath; and in like

cases the word "sworn" shall be construed to include the word "affirmed". [MCL 8.3k.]

This Court reviews de novo questions of constitutional and statutory construction. *Fluor Enterprises, Inc v Dep't of Treasury*, 477 Mich 170, 174; 730 NW2d 722 (2007). "The primary goal of statutory interpretation is to give effect to the intent of the Legislature." *Haynes v Neshewat*, 477 Mich 29, 35; 729 NW2d 488 (2007). When interpreting a statute, the Court must first examine the language of the statute itself. *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002). If unambiguous, a statute must be enforced as written. *Fluor*, *supra*. A statutory provision is ambiguous only if it irreconcilably conflicts with another provision or when it is equally susceptible to more than a single meaning. *Id*. at 177 n 3. Further, "a finding of ambiguity is to be reached only after all other conventional means of interpretation have been applied and found wanting." *Lansing Mayor v Pub Service Comm*, 470 Mich 154, 165; 680 NW2d 840 (2004) (citation and internal punctuation omitted).

Two other special rules of construction apply to the statutes at issue here. First, as the majority concedes, the statutes are *in pari materia*, meaning they relate to the same subject or share a common purpose and, therefore, must be read together as one law. *People v Webb*, 458 Mich 265, 274; 580 NW2d 884 (1998). So, even if an ambiguity exists permitting judicial construction beyond the plain text, a construction that avoids conflict controls. *Id*. Second, unless defined in the statute, every word or phrase of a statute should be accorded its plain and ordinary meaning, considering the context in which the words are used. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236-237; 596 NW2d 119 (1999). But when the Legislature specifically defines a term, the statutory definition alone controls the meaning of that term. *Haynes*, *supra* at 35.

MCL 600.1432(1) plainly mandates that the "usual mode of administering oaths now practiced in this state, by the person who swears holding up the right hand, *shall be observed in all cases* in which an oath may be administered by law except as otherwise provided by law." (Emphasis added.) In *People v Ramos*, 430 Mich 544; 424 NW2d 509 (1988), our Supreme Court emphasized that the "usual mode" applied "*in all cases*," *id.* at 548-549, 553, (emphasis in original) and that the upraised right hand was an integral and required formality for a valid oath that is subject to the pains of perjury, *id*. at 548-553. The Court explained the importance of the outward physical nature of the statutory requirements:

> Oaths take the form of *a significant and readily observable act or acts* that serve to impress upon the oath taker the importance of providing accurate information, and operate as *objective evidence* that the oath taker understands the importance of providing accurate information and is promising, under threat of severe penalties for lying, to be truthful. [*Id*. at 548 (emphasis added).]

Further, the plain text of MCL 600.1432(1) manifests that the "usual mode" applies in *all cases* whether one swears an oath or affirms to tell the truth by providing that it "shall be observed in all cases in which an oath *may be administered* by law except as otherwise provided by law." (Emphasis added.) Because an oath by swearing *may* be administered *in all cases*, "the usual mode of administering oaths . . . by the person who swears holding up the right hand" applies *in all cases*, whether or not an oath *is actually administered*. This reading is further

buttressed by the text of the second sentence of MCL 600.1432(1), which provides preamble language to use for either swearing an oath or affirming to tell the truth: "You do solemnly swear or affirm."

Moreover, MCL 8.3k mandates how the words "oath" and "sworn" "shall be construed." I disagree with the majority that the plain text of MCL 8.3k may be ignored on the basis of the majority's determination of the "manifest intent of the legislature," MCL 8.3, which the majority in turn bases on the lack of text in MCL 600.1434. Rather, the definitions the Legislature has provided in MCL 8.3k must be applied to MCL 600.1432. *Haynes*, *supra* at 35. Specifically, MCL 8.3k requires that "in all cases where by law an affirmation may be substituted for an oath," the "word 'oath' shall be construed to include the word 'affirmation'" and "the word 'sworn' shall be construed to include the word 'affirmed.'" When the rule of construction required by MCL 8.3k is applied to the first sentence of MCL 600.1432(1) in a case where a person conscientiously opposes taking an oath, as permitted by MCL 1434, it would read (with tenses altered to fit the context): "The usual mode of administering [affirmations] now practiced in this state, by the person who [affirms] holding up the right hand, shall be observed in all cases in which an [affirmation] may be administered by law except as otherwise provided by law."

I also disagree with the majority that MCL 600.1434 may be read independently from MCL 600.1432. Because these two provisions are *in pari materia*, they must be read together in harmony as one law. *Webb*, *supra* at 274. The plain text of MCL 600.1432(1) requires that it applies "except as otherwise provided by law." Thus, unless an exception to the hand-raising requirement of the "usual mode" stated in § 1432(1) is found elsewhere, it applies to both swearing an oath and affirming to tell the truth. Clearly, § 1434 provides an exception to *swearing* an oath. "Every person conscientiously opposed to taking an oath may, *instead of swearing*, solemnly and sincerely affirm, under the pains and penalties of perjury." MCL 600.1434 (emphasis added). But § 1434 contains no exception to the "usual mode" stated in § 1432(1) of raising one's right hand when affirming to tell the truth. Indeed, citing *Farrington v Total Petroleum, Inc*, 442 Mich 201, 210; 501 NW2d 76 (1993), and *Polkton Charter Twp v Pellegrom*, 265 Mich App 88, 103; 693 NW2d 170 (2005), the majority correctly notes that "[t]he omission of a provision in one statute that is included in another statute should be construed as intentional, and provisions not included by the Legislature may not be included by the courts." *Ante* at ___. But the majority nevertheless reads into § 1434 language the Legislature did not adopt. The Legislature could have written, but did not write, § 1434 to provide: "Every person conscientiously opposed to taking an oath may, instead of swearing *while holding up the right hand*, solemnly and sincerely affirm, under the pains and penalties of perjury." I agree that this Court must assume that the Legislature intentionally omitted from § 1434 language that would exclude from the usual mode of affirming to tell the truth the hand-raising requirement of § 1432(1). Thus, the absence of language in § 1434 is no basis for ignoring the plain hand-raising requirement of § 1432(1).

In addition, I disagree with the majority that a conflict exists between MCL 600.1434 and MCL 600.1432 that would permit judicial construction beyond the text of the statutes, thus permitting the exception to swearing in § 1434 to control the general rule stated in § 1432. There is no conflict at all between § 1432 and § 1434. Indeed, MCL 8.3k mandates how the words "oath" and "sworn" "shall be construed." Specifically, MCL 8.3k requires that "in all

cases where by law an affirmation may be substituted for an oath," the "word 'oath' shall be construed to include the word 'affirmation'" and "the word 'sworn' shall be construed to include the word 'affirmed.'" MCL 8.3k, MCL 600.1432(1), and MCL 600.1434 dovetail harmoniously. MCL 600.1434 specifies when an affirmation may be substituted for swearing an oath as required by § 1432(1). That is, an affirmation to tell the truth may be substituted for swearing an oath when a "person [is] conscientiously opposed to taking an oath." MCL 600.1434. Thus, § 1434 states a situation "where by law an affirmation may be substituted for an oath." MCL 8.3k. When the rule of construction required by MCL 8.3k is applied to the first sentence of MCL 600.1432(1) in a case where a person conscientiously opposes taking an oath, it reads: "The usual mode of administering [affirmations] now practiced in this state, by the person who [affirms] holding up the right hand, shall be observed in all cases in which an [affirmation] may be administered by law except as otherwise provided by law." Accordingly, § 1432(1), construed as MCL 8.3k dictates and read together in harmony with § 1434, requires that an affirmation be made with the significant and readily observable act of raising one's right hand.

The majority supports its contrary conclusion by citing MRE 603, suggesting that as a rule governing practice and procedure it trumps the hand-raising requirement of the statutory scheme. But the issue of our Supreme Court's constitutional supremacy regarding adopting rules of practice and procedure is not reached unless a clear conflict exists between MRE 603 and the statutory hand-raising provision at issue. See *McDougall v Schanz*, 461 Mich 15, 24-26; 597 NW2d 148 (1999). The rules of statutory construction apply equally to court rules. *Hinkle v Wayne Co Clerk*, 467 Mich 337, 340; 654 NW2d 315 (2002). Thus, undefined terms in court rules are assigned their ordinary meanings, consulting a dictionary if necessary. *Haynes*, *supra* at 36. The subject of MRE 603 is what "every witness shall be required to *declare*" before he testifies. (Emphasis added). The ordinary meaning of "declare" is to state or make known by means of words. "Declare" is similarly defined in *Random House Webster's College Dictionary* (2000) as: "1. to make known; state clearly, esp. in explicit or formal terms[;] 2. to announce officially; proclaim[;] 3. to state emphatically[; and] 4. to reveal; indicate . . . ." Thus, the plain text of MRE 603 does not address the statutory hand-raising requirement, only what a witness must say during the swearing of an oath or an affirming to tell the truth. Specifically, MRE 603 requires only that the words of an oath or affirmation "declare that the witness will testify truthfully . . . in a form calculated to awaken the witness' conscience and impress the witness' mind with the duty to do so."

Just as MRE 603 requires no particular form of words to swear or affirm, our Supreme Court has similarly interpreted the predecessor of MCL 600.1432(1). In *People v Mankin*, 225 Mich 246; 196 NW 426 (1923), the Court addressed 1915 CL 12568, which then read: "The usual mode of administering oaths now practiced in this State, by the person who swears holding up the right hand, shall be observed in all cases in which an oath may be administered by law except in the cases herein otherwise provided." The question presented in *Mankin* was whether a valid oath was administered when the words "so help you God" were omitted. The Court held that the words were not required and opined, "It will be observed that this statute does not require any particular form for an oath; it provides only that the party shall swear holding up the right hand." *Mankin, supra* at 252. So, there is no conflict between MRE 603 and MCL 600.1432(1).

Likewise, the majority's reliance on federal caselaw to support its position is unavailing. The plain text of MCL 600.1432(1) cannot be overcome by federal decisions interpreting federal rules that adopt the common law. This Court must "presume that the Legislature is aware of the common law that legislation will affect; therefore, if the express language of legislation conflicts with the common law, the unambiguous language of the statute must control." *Lewis v LeGrow*, 258 Mich App 175, 183-184; 670 NW2d 675 (2003).

In *Gordon v Idaho*, 778 F2d 1397, 1400 (CA 9, 1985), the Ninth Circuit Court of Appeals held that the district court abused its discretion by ruling that a witness must "use either the word 'swear' or 'affirm'" for a valid oath or affirmation. Neither the pertinent federal rules at issue in *Gordon* nor the applicable federal statute contains a hand-raising requirement like Michigan's statute. A federal case interpreting a federal rule not containing a specific provision contained in a Michigan statute is neither authoritative nor persuasive when interpreting the Michigan statute. *Abela v Gen Motors Corp*, 469 Mich 603, 606-607; 677 NW2d 325 (2004).

In *United States v Looper*, 419 F2d 1405 (CA 4, 1969), the court addressed FR Crim P 26, which provided that "except when an act of Congress or the criminal rules otherwise provide, '[t]he admissibility of evidence and the competency and privileges of witnesses shall be governed * * * by the principles of the common law as they may be interpreted by the courts of the United States in the light of reason and experience.'" *Looper*, *supra* at 1406. Thus, *Looper* applied "the common law, as made applicable by Rule 26," concluding that it "requires neither an appeal to God nor the raising of a hand as a prerequisite to a valid oath. All that the common law requires is a form or statement which impresses upon the mind and conscience of a witness the necessity for telling the truth." *Looper*, *supra* at 1407. But here, the common law is not at issue. Rather, the present case presents the specific requirements of MCL 600.1432(1), which this Court has already determined are mandatory and not merely directory. See *Dawson v Secretary of State*, 44 Mich App 390, 392-393; 205 NW2d 299 (1973).

At issue in *Dawson* was whether a police officer had submitted a proper sworn statement of Dawson's refusal to submit to a breath test after a traffic accident. "The officer signed the report and handed it to a Detroit police sergeant who signed it as 'clerk of record'. The officer did not, however, raise his right hand and swear to the authenticity of the information in the report." *Dawson, supra* at 391. This Court held that the officer had not submitted a sworn statement because the statutory requirements were mandatory and not merely directory. *Id*. at 392-393. The *Dawson* decision is contrary to the apparent general rule stated in 58 Am Jur 2d, Oath and Affirmation, § 22, p 888: "The ceremony of holding up the hand is not essential to the validity of the oath of a witness, the provision of the statute as to this form being merely directory." But the treatise also notes the existence of "contrary authority where, pursuant to an express statute, the usual mode of administering an oath is by the person who swears holding up his right hand, failing which there is no formal valid oath." *Id*., citing *Dawson*, *supra*. Consequently, both *Gordon* and *Looper* are inapposite. They provide no support to avoid application of the plain text of MCL 600.1432(1), even if it is contrary to the common law. *Lewis*, *supra* at 183-184.

Having concluded that the plain text of Michigan's statutory scheme requires a prospective witness before testifying to raise his or her right hand to either swear or affirm to tell

the truth, it is necessary to reach the constitutional issue this appeal presents. I would hold that the statutory hand-raising requirement violates neither the First Amendment of the United States Constitution nor Const 1963, art 1, § 4, which provides:

> Every person shall be at liberty to worship God according to the dictates of his own conscience. No person shall be compelled to attend, or, against his consent, to contribute to the erection or support of any place of religious worship, or to pay tithes, taxes or other rates for the support of any minister of the gospel or teacher of religion. No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary; nor shall property belonging to the state be appropriated for any such purpose. The civil and political rights, privileges and capacities of no person shall be diminished or enlarged on account of his religious belief. [Const 1963, art 1, § 4.]

Likewise, the Establishment Clause and Free Exercise Clause of the First Amendment of the United States Constitution provide: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." US Const, Am I.

"[B]oth the state and federal provisions of the Establishment Clause and Free Exercise Clause of the First Amendment of the United States Constitution, are subject to similar interpretation." *Scalise v Boy Scouts of America*, 265 Mich App 1, 11; 692 NW2d 858 (2005). A three-pronged test is used to determine the constitutionality of suspect state action. "'First, the [state action] must have a secular . . . purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; finally, the [state action] must not foster 'an excessive government entanglement with religion.'" *Id.* at 11-12, quoting *Lemon v Kurtzman*, 403 US 602, 612-613; 91 S Ct 2105; 29 L Ed 2d 745 (1971).

As opposed to swearing an oath, which has a religious aspect of invoking a Supreme Being when promising to tell the truth, raising one's right hand has a secular origin and fosters the secular purposes of reinforcing the solemnity of the occasion and ensuring truthful testimony by permitting those who testify falsely to suffer the pains of a perjury prosecution. In *Mankin, supra*, our Supreme Court discussed the disparate origins of the swearing and hand-raising requirement set forth in the predecessor of MCL 600.1432(1), 1915 CL 12568. In holding that the statute required no particular form of words, the *Mankin* Court opined:

> It will be observed that this statute does not require any particular form for an oath; it provides only that the party shall swear holding up the right hand. The act of raising the right hand while taking an oath was originally adopted from the Roman practice. It was there required that one guilty of perjury should be branded on the right hand. When a person presented himself as a witness in a Roman court he was required to hold up the right hand so that the judge might see whether he had been branded for perjury. Needless to say the act of holding up the right hand while taking an oath has an entirely different significance in our practice. We have come to regard the uplifted hand accompanied by solemn swearing as an appeal to God for the truth of what the witness is about to testify. The words "You do solemnly swear" in and of themselves import a serious appeal to God. When addressed to the taker of an oath, who stands with uplifted hand,

> they signify that he is bound in conscience to tell the truth. Nothing further is necessary. While it might be the better practice to conclude the oath with the words "So help you God," we think they are not absolutely essential to its validity. [*Mankin, supra* at 252.]

As noted already, this Court discussed the importance of the uplifted right hand in *Dawson*. In holding that a validly administered oath was an essential element of perjury, the *Ramos* Court cited *Dawson* with approval. *Ramos, supra* at 550. The Court also cited other Michigan cases in which the uplifted hand was an integral requirement of a valid oath. For example, in *In re Bennett*, 223 F Supp 423 (WD Mich, 1963), Bennett "had not orally acknowledged, with upraised right hand, an orally administered oath"; therefore, an affidavit he signed was invalid. *Ramos, supra* at 550. Likewise, the Court recognized that as discussed in *Mankin*, "the statute . . . requires some form of oral admonishment, which the oath taker receives and acknowledges with an upraised right hand." *Ramos, supra* at 549. For the reasons discussed earlier, I can only conclude that the secular purposes of an uplifted hand apply equally to affirmations and oaths.

More importantly, the statute requires an external, "significant and readily observable act or acts" intended to impress on the witness the importance of telling the truth. *Ramos, supra* at 548. "The statutory form of oath is designed to be sufficiently distinct so that it is recognizable by the oath taker and any observers as a clear acknowledgment of the oath taker's assumption of responsibility for providing truthful information." *Id*. at 552. "One of the primary functions of an oath is to place the oath taker on notice that he violates his oath at the risk of incurring severe penalties." *Id*. at 553. These are both secular purposes for requiring the visible, external act of raising one's right hand that apply equally to affirmations. Accordingly, the first prong of the test set forth in *Scalise* is satisfied. The hand-lifting requirement of § 1432(1) has the secular purpose of fostering truthful testimony through an observable act that adds to the solemnity of the occasion and subjects untruthful witnesses to a possible perjury prosecution.

Because the principal or primary effect of requiring an uplifted hand neither advances nor inhibits religion, the second prong of the test is also satisfied. As discussed in *Mankin, supra* at 252, the custom of requiring an uplifted hand apparently has its origins in the secular courts of Rome and is directly linked to the secular goal of preventing perjury. Even accepting plaintiff 's statement that lifting her hand is contrary to her religious beliefs, which this Court must,[1] the fact remains that the *principal or primary effect* of requiring an uplifted hand neither advances nor inhibits religion. In addition, plaintiff was not compelled to participate in Michigan's court system. Indeed, she voluntarily chose to bring suit in a Michigan court. Thus, she must abide by Michigan's laws and court rules.

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[1] Const 1963, art 1, § 18 provides: "No person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief." MCL 600.1436 provides: "No person may be deemed incompetent as a witness, in any court, matter or proceeding, on account of his opinions on the subject of religion. No witness may be questioned in relation to his opinions on religion, either before or after he is sworn."

The facts of this case also satisfy the final prong of the test discussed in *Scalise*. The statutory requirement of an uplifted hand does not foster "an excessive government entanglement with religion." Indeed, the requirement of lifting one's hand applies to all witnesses regardless of the witness's belief system; consequently, it creates no entanglement with religion. See *Scalise, supra* at 19. Our Supreme Court, citing *Employment Div, Dep't of Human Resources of Oregon v Smith*, 494 US 872; 110 S Ct 1595; 108 L Ed 2d 876 (1990), has noted "that generally applicable, religion-neutral laws that have the effect of burdening a particular religious practice need not be justified, under the Free Exercise Clause, by a compelling governmental interest." *Greater Bible Way Temple of Jackson v City of Jackson*, 478 Mich 373, 380; 733 NW2d 734 (2007). In *Smith*, "the United States Supreme Court held that Oregon's prohibition of the use of peyote in religious ceremonies, and the denial of unemployment benefits to persons discharged for such use, does not violate the Free Exercise Clause of the First Amendment." *Greater Bible Way Temple, supra.* The *Smith* Court's observation is instructive in the present case:

> It may fairly be said that leaving accommodation to the political process will place at a relative disadvantage those religious practices that are not widely engaged in; but that unavoidable consequence of democratic government must be preferred to a system in which each conscience is a law unto itself or in which judges weigh the social importance of all laws against the centrality of all religious beliefs. [*Smith, supra* at 890.]

In sum, while the Legislature, through the political process, has enacted a statutory scheme that accommodates religious objections to swearing an oath, it has not and need not constitutionally accommodate plaintiff's individual religious beliefs. From the foregoing analysis, I conclude that the hand-lifting requirement of MCL 600.1432(1) violates neither the Establishment Clause nor the Free Exercise Clause of the First Amendment, and also does not violate Const 1963, art 1, § 4.

Next, it is necessary to address whether the trial court abused its discretion by dismissing this case. "The Michigan Court Rules at MCR 2.313(B)(2)(c) explicitly authorize a trial court to enter an order dismissing a proceeding or rendering a judgment by default against a party who fails to obey an order to provide discovery." *Bass v Combs*, 238 Mich App 16, 26; 604 NW2d 727 (1999). A trial court abuses its discretion when its decision falls outside the principled range of outcomes. *Casey v Auto Owners Ins Co*, 273 Mich App 388, 404; 729 NW2d 277 (2006), citing *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006).

I conclude that the trial court had the legal authority to dismiss this case and did not abuse its discretion by doing so upon plaintiff Donkers' refusal to comply with the statutory procedure to affirm to tell the truth at her deposition. I would also hold that the dismissal was not plain error warranting reversal with respect to plaintiff Barnhill. The essence of plaintiff Donkers' complaint in the present case comes from an attempt to obtain restitution of a non-refundable retainer fee on a written contract for legal services pertaining to Donkers' already filed lawsuit against one Leslie Neal. The complaint also sought "the benefit of the bargain" of the contract for legal services even though Donkers fired defendant three months after entering the contract during a deposition regarding her claim against Neal. Donkers also sought any actual and exemplary damages she might have been awarded against Leslie Neal. Barnhill,

however, was not a party to the legal services contract. The complaint alleges only that Donkers and Barnhill purport to be common-law spouses. The complaint further indicates plaintiffs' religious belief that husband and wife are "one flesh" and mentions the common-law doctrine of "coverture."[2] On these doctrines, apparently, plaintiffs style their complaint as husband and wife in the singular "plaintiff." The only allegation regarding Barnhill individually with respect to the legal services contract with defendant is that Barnhill gave Donkers his "oral consent" and "advice" to accept defendant's offer of legal services. So, to the extent that Donkers' claim is contractual, Barnhill is not a party to the contract, so he has no independent claim against defendant. Likewise, even if Donkers' claim against defendant were for fraud or malpractice, Barnhill has no independent claim. With respect to the latter claim, it is clear that Donkers cannot prove any damages because the underlying suit against Neal was, after Donkers fired defendant, tried to a verdict of no cause of action.[3] Given Donkers' adamant refusal to affirm to tell the truth in accordance with MCL 600.1432(1), the trial court did not abuse its discretion by dismissing her case.

Any procedural error by the trial court in dismissing this case with respect to Barnhill does not warrant reversal because his rights were not materially affected, MCR 2.611(A)(1), and the dismissal is not inconsistent with substantial justice. MCR 2.613(A); *Chastain v General Motors Corp*, 467 Mich 888 (2002). Moreover, this Court "will not reverse the decision of a trial court if it reached the right result, albeit for the wrong reason." *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 190; 600 NW2d 129 (1999).

For all the foregoing reasons, I would affirm.

/s/ Jane E. Markey

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[2] See *State v Donkers*, 170 Ohio App 3d 509, 518, 553-554; 867 NE2d 903 (2007). "At common law, a married woman, by her coverture, enjoyed no individual rights pertaining to the property she may have owned before the marriage or acquired during the marriage. The state of coverture was virtually a legal disability whereby a woman lost the capacity to contract, sue, or be sued individually." *North Ottawa Community Hosp v Kieft*, 457 Mich 394, 398; 578 NW2d 267 (1998). The married women's property acts enlarged married women's property and contractual rights, and removed some of the disabilities of coverture. See MCL 557.21 *et seq*. Also, Michigan's 1963 Constitution abolished the disabilities of coverture with respect to property. *In re Miltenberger Estate*, 275 Mich App 47, 51; 737 NW2d 513 (2007); Const 1963, art 10, § 1.

[3] Donkers' underlying claim against Neal was tried to a verdict of no cause of action that was entered on January 11, 2006. This Court dismissed appellant's untimely appeal. *Donkers v Neal*, unpublished order of the Court of Appeals, entered May 26, 2006 (Docket No. 270310).